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FISCAL IMPACT STATEMENT

LS 7658

BILL NUMBER: HB 1410

NOTE PREPARED: Apr 9, 2007

BILL AMENDED: Apr 9, 2007

SUBJECT: Criminal History Checks.

FIRST AUTHOR: Rep. Hoy

FIRST SPONSOR: Sen. Steele

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill:

(A) exempts a post-secondary school of education from paying a fee for a limited criminal history record for a student before the student begins the student's field or classroom experience. The bill requires a criminal history background check for: (1) an applicant for employment; (2) a volunteer; or (3) a contract employee; with a school corporation who begins employment after June 30, 2007. The bill also specifies that the background check must include a check of the sex offender registry in all 50 states, and either: (1) a national background check; or (2) an expanded background check (a check of county records for the preceding 10 years in states in which the subject of the check resided). It requires the sex offender registry check and the check of the individual's Indiana criminal history to be completed within 72 hours after the individual begins employment. It also requires the remaining part of the background check to be completed at least three months after the individual begins employment. The bill specifies the results of the criminal history background check may include only: (1) criminal history data with disposition information; and (2) information with respect to any arrest or criminal charge that occurred less than one year before the date the background check was initiated even if a disposition concerning the arrest or criminal charge has not been entered. The bill also allows a school corporation to enter into an agreement with a private entity that is subject to the federal Fair Credit Reporting Act to perform criminal background checks, and requires the private entity to: (1) include a disclaimer explaining what information is not included in the check; and (2) note that an arrest or a pending charge is not evidence of guilt. It makes it a Class A infraction for a private entity to disclose information compiled as part of a criminal history check for another purpose without the written authorization of the person who is the subject of the check.

(B) specifies that a limited criminal history check includes arrests even if there is no disposition. It also

requires requests for limited criminal history submitted by noncriminal justice agencies and individuals to be name-based, and requires the State Police Department to inform persons who receive criminal history information of the scope of the information. The bill requires a court to order a convicted defendant to be fingerprinted unless the defendant was arrested and processed at the county jail, and requires the Security and Privacy Council to adopt rules to ensure the uniform and efficient submission of criminal history data to the State Police Department. The bill also grants civil immunity to prosecuting attorneys, clerks, and law enforcement officials for good faith errors or omissions that relate to the transmission of fingerprints or other criminal history data. It permits an employer to request a limited criminal history check of an employee who provides services involving contact with children or individuals who are mentally ill or disabled. It also makes other changes and conforming amendments.

Effective Date: July 1, 2007.

Explanation of State Expenditures: (A) *Summary:* This bill requires school corporations to modify their criminal history policies to include a requirement mandating all volunteers, individuals hired, and each individual having direct contact with children who enters into a contract with the school corporation or who is employed by an entity that has a contract with a school corporation, after June 30, 2007, to complete either a national criminal history background check or expanded criminal history check, and a sex offender registry check in all 50 states. This provision would increase revenue deposited into the General Fund from criminal history background check fees by an indeterminable amount.

The bill exempts a post-secondary school of education from having to pay a fee for a name-based limited criminal history check for certain students. The provision could potentially decrease expenditures for post-secondary schools of education; however, it would also decrease revenue to the state General Fund. Actual decreases are unknown.

Indiana State Police: As proposed, the Indiana State Police (ISP) would experience an increase in workload.

Background Information:

A Limited Criminal History Background Check means information with respect to any arrest or criminal charge, which must include: (1) a disposition; and (2) a photograph of the person who is the subject of the limited criminal history, if a photograph is available. The term includes information about any arrest or criminal charge that occurred less than one year before the date of a request even if no disposition has been entered. A limited criminal history background check is obtained through the ISP.

A National Criminal History Background Check means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification. A national criminal history background check is also obtained through the ISP.

Post-Secondary Schools of Education Fee Exemption: The bill exempts a school of education of a public or private post-secondary educational institution from paying a fee for a name-based limited criminal history background check if the fee is made as a part of a background investigation of a student before or after the student begins the student's field or classroom experience. The number of students for which a name-based limited criminal history background check is currently conducted is not known. To the extent that a post-secondary school of education is currently paying the fee for a student to obtain a name-based limited criminal history background check, expenditures for the post-secondary school of education would be reduced. Fees for name-based limited criminal history background checks are as follows: \$16 for persons

who do not subscribe to AccessIndiana, \$15 for AccessIndiana subscribers, or \$7 by mail [*Note: Current statute refers to these checks as limited criminal history checks*].

(B) Modification of the Definition of a Limited Criminal History: The bill modifies the definition of a limited criminal history through eliminating the requirement that it include information about any arrest or criminal charge that occurred less than one year before the date of a request. The ISP reports that modification of its criminal history database can be completed within the agency's existing level of resources.

Modification of Criminal History Requests Allowed by Individuals: The bill modifies the type of criminal history check which can be requested by an individual through creating a name-based criminal history check. A name-based criminal history check means a search of criminal history data maintained by the ISP that is conducted using the individual's name and other identifying information and does not use fingerprint identification or another method of positive identification.

Under current law, a person may request a criminal history check review challenge (fingerprint identification is required) prior to having obtained a limited criminal history (can be obtained through subject or fingerprint identification).

As proposed, the individual would not be able to obtain a review challenge until they first obtain a name-based limited criminal history check. This could potentially reduce the ISP workload. Review challenges require more review than do name-based limited criminal history checks because they require fingerprint identification. However, it should be noted that individuals would still be able to obtain a name-based limited criminal history check and subsequently request a review challenge. In addition, individuals might request a name-based limited criminal history check in place of a review challenge. This provision would likely impact the workload of the ISP; however, the actual impact is indeterminable.

Addition to List of Noncriminal Justice Organizations Able to Request Limited Criminal History Checks: The bill adds persons employed by a noncriminal justice organization or an individual who provides services that involve contact with, care of, or supervision over, a child or an individual who is mentally ill, physically disabled, or developmentally disabled to the list of noncriminal justice organization and individuals that law enforcement agencies are required to release limited criminal history information to. This provision could potentially increase the workload for the ISP. Actual increases would be dependent on the number of additional limited criminal history checks requested.

Addition of Written Notice to Limited Criminal History Check Information: The bill requires the ISP to provide noncriminal justice organizations or individuals who request a limited criminal history check with a notice in writing which pertains to criminal background check information provided to the organization or individual. The ISP reports that it currently includes a written notice with criminal background check information and should be able to modify the notice within the ISP's existing level of resources.

Requirement for Security and Privacy Council to Establish Transmission of Criminal History Procedures: The bill requires the Security and Privacy Council to establish procedures to ensure the uniform and efficient transmission of criminal history data, including the development of an electronic format for submission of the data. The Council is comprised of nine members; however, it has only met once since its establishment in 1981 and does not currently have members appointed. Members of the Council would be entitled to reimbursement for per diem and mileage. Expenditures would be dependent on the number of meetings held and the amount of per diem and mileage reimbursement per meeting.

Note: Additional costs may be experienced by the ISP as a result of procedures established by the Council. Actual costs would depend on administrative action.

Requirement to Fingerprint all Persons after Sentencing for an Offense: The bill requires the courts to order a defendant to be fingerprinted immediately after sentencing for an offense if the defendant was not previously arrested and processed at a county jail. Sheriffs are responsible for fingerprinting of defendants. The Indiana Sheriffs' Association (ISA) reports that this provision of the bill would likely increase workload for sheriffs. However, the number of persons who are not fingerprinted prior to sentencing is likely small. Actual increase in workload would be dependent on the number of additional persons needing to be fingerprinted.

Explanation of State Revenues: (A) *Mandate that New Hires Complete a National Criminal History Background Check or Expanded Criminal History Check and Sex Offender Registry Check-* This bill requires school corporations to modify their criminal history policies to include a requirement mandating all volunteers, individuals hired, and for each individual having direct contact with children who enters into a contract with the school corporation or is employed by an entity that has a contract with a school corporation, to complete either an expanded criminal history check or a national criminal history background check, and a sex offender registry check in all 50 states. Under current law, school corporations are required to adopt a policy concerning criminal history information which pertains to individuals hired for employment.

For the purposes of the bill, it is assumed that school corporations would require all new hires and volunteers to complete a national criminal history background check as opposed to an expanded criminal history check.

Fiscal Impact: Background check policies vary by school corporation; some request limited criminal history and/or national criminal history background check information, while others do not. In addition, school corporations are exempt from fees for limited criminal history checks. However, if the hire requests the check, a fee will be charged. Whether the school corporation requests the background check or the hire requests the check varies by school corporation as well. The number of new hires paying fees for background checks is unknown. In addition, the number of school corporations which require volunteers to submit criminal history information is not known. Fees for limited criminal history background checks are as follows: \$16 for persons who do not subscribe to AccessIndiana, \$15 for AccessIndiana subscribers, or \$7 by mail. A portion of the fees, \$7, is deposited into the state General Fund; the remaining \$8 or \$9.32 is deposited into the Indiana Office of Technology (IOT) Portal fund. The IOT reports that the Portal Fund is used to maintain and modify AccessIndiana webpages.

National criminal history background checks cost a total of \$39, \$24 of which is given to the federal government, and the remaining \$15 is deposited into the state General Fund.

	Current	As Proposed
Type of Check and Requirement	Depending on school corporation or charter school policy, may be required to submit a limited or national criminal history check for new hires. It is not known whether or not school corporations require volunteers to submit criminal history information.	Would be required to collect national criminal history check or expanded history check for all new hires and volunteers.
Fee	<u>Limited</u> : \$16.32 for persons who do not subscribe to AccessIndiana, \$15 for AccessIndiana subscribers, and \$7 by mail; fee is waived for school corporations; or <u>National</u> : \$39; \$15 of which is deposited into the state General Fund, \$24 is forwarded to the federal government.	\$39; \$15 of which is deposited into the state General Fund, \$24 is forwarded to the federal government. Fees for expanded criminal history checks are not known. However, no revenue would be forwarded to state/local governments.
Fee Responsibility	School corporation may require the new hire to pay fees required for a national criminal history background check; new hire is required to pay fees for a limited criminal history background check.	School corporations may elect to pay fees associated with obtaining a national criminal history background check.

Under this provision of the bill, revenue deposited into the General Fund from fees would likely increase. Actual increases will depend on the number of school corporations currently requiring limited criminal history checks for new hires and volunteers, and the fee paid for those checks (would range between \$0 for school corporations and \$16 for individuals requesting the information online without an AccessIndiana subscription), and the number of new hires and volunteers, to school corporations who would be required under the bill to submit a national criminal history check or who are not currently doing so (\$15 of the fee would be deposited into the state General Fund). Note: The bill allows a school corporation to enter into an agreement with a private entity to conduct a criminal history background check. Should a school corporation enter into an agreement, revenue would **not** be deposited into the state General Fund for checks conducted by the private entity.

Background Information: During the 2005-2006 school year, approximately 12,400 persons were hired as new employees. The number of volunteers employed by school corporations or employed through entities that a school corporation contracts with are not known.

Post-secondary Schools of Education Fee Exemption: To the extent that a student or a post-secondary school of education currently obtains a name-based limited criminal history check for the purposes of the bill, the state would experience a decrease in revenue to the state General Fund and the IOT Portal Fund. Actual decreases would be dependent on the number of students obtaining a name-based limited criminal history check, method in which the check was obtained, and the fee paid for the check.

Penalty Provision: The bill makes it a Class A infraction for a private entity to perform a criminal history check for a school corporation and use the information compiled for any other purpose without the express written consent of the individual who is the subject of the criminal history check. The maximum judgment for a Class A infraction is \$10,000, which would be deposited in the state General Fund. However, any

additional revenue is likely to be small.

(B) *Court Fee Revenue*: The bill modifies current statute relating to expungement of records relating to an arrest. As proposed, the number of persons petitioning the court for expungement of records could increase. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

Modification of Criminal History Requests Allowed by Individuals: Under the bill, revenue to the state General Fund would likely change. Fees vary for limited criminal history background checks and are dependent on the method in which the information is obtained. Revenue from fees collected is deposited into the state General Fund and the Indiana Office of Technology (IOT) Portal Fund (see table below). The IOT reports that the Portal Fund is used to maintain and modify AccessIndiana webpages.

The state would likely experience a change in revenue. Actual change is indeterminable and would be dependent on the number of persons currently requesting a review challenge (for which the state would experience a decrease of \$10 per review challenge) and the number of people who would under the bill (1) obtain a name-based limited criminal history check (for which the state would experience an increase in revenue) or (2) obtain a name-based limited criminal history check (for which the state would experience an increase in revenue) and then subsequently obtain a review challenge (for which the state would experience an increase in revenue of \$10 per review challenge).

Limited Criminal History Background Check Fees				
Type of Fee	Information Obtained Through	Amount of Fee	Amount of Fee Deposited into State General Fund	Amount of Fee Deposited into IOT Portal Fund
AccessIndiana (Subscriber)	AccessIndiana Website	\$15	\$7	\$8
AccessIndiana (Non-Subscriber)	AccessIndiana Website	\$16.32	\$7	\$9.32
Mail/In-Person	Mail; In-Person	\$7	\$7	\$0
Partial Exemption	AccessIndiana Website; Mail; In-Person	\$7	\$7	\$0
Full Exemption	AccessIndiana Website; Mail; In-Person	\$0	\$0	\$0
Review Challenge	Mail; In-Person	\$10	\$10	\$0

Addition to List of Noncriminal Justice Organizations Able to Request Limited Criminal History Checks: This provision could potentially increase revenue for the state. Actual increases are dependent on the number of additional limited criminal history checks requested and the fee paid for each check.

Explanation of Local Expenditures: (A) *Modification of Criminal History Check Policy:* School corporations would be required to modify their current policy pertaining to criminal history checks for new hires and volunteers. School corporations should be able to accomplish this within their current workload.

National Criminal History Background Check Fees: The bill allows a school corporation to pay for all costs associated with obtaining a national criminal history background check or expanded criminal history check, which is required under the bill. Increases in expenditures for school corporations are not known and would depend on the number of persons school corporations elect to pay for.

Explanation of Local Revenues: (A) *Fingerprint Card Fees:* Under the bill, certain new hires and volunteers would need to submit a fingerprint card to complete a national criminal history background check. If the card is obtained through an ISP post, of which there are 18 statewide, it is free. If it is obtained from a local law enforcement agency, fees vary. Fees collected from fingerprint cards are used by the local police department which collects the fee. Actual use of the fees vary by department.

Penalty Provision: If additional court actions are filed and a judgment is entered, local governments would receive revenue from court fees. However, any additional revenue is likely to be small.

(B) *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: Indiana State Police; Department of Education; Indiana Office of Technology; Post-secondary schools of education.

Local Agencies Affected: Local school corporations and townships; charter schools; local law enforcement agencies; trial courts.

Information Sources: Chris Sheets, Indiana State Police; Chris Cotterill, Indiana office of Technology; Sherry Beck, Indiana State Police; Fred Sargeson, AccessIndiana; Professional Standards Board, Department of Education; Doug Shelton, Indiana State Police; Tony Sommer, ISP; Steve Johnson, Indiana Prosecuting Attorney's Council; Doug Gosser, Indiana Sheriffs' Association.

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